



**Billing Code 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 150708591-6096-02]**

**RIN 0648-XE043**

**Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement annual management measures and harvest specifications to establish the allowable catch levels (i.e. annual catch limit (ACL)/harvest guideline (HG)) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific Coast for the fishing season of July 1, 2015, through June 30, 2016. This rule is implemented pursuant to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2015-2016 HG for Pacific mackerel is 21,469 metric tons (mt). This is the total commercial fishing target level. This action also implements an annual catch target (ACT), of 20,469 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the HG (21,469 mt) and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. This final rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

**DATES:** Effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]* through June 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034 *Joshua.Lindsay@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the recommended overfishing limit (OFL) and acceptable biological catch (ABC) calculations from the SSC, along with the calculated ACL, HG and ACT recommendations, and comments from the Team and Subpanel. Following review by the Council and after reviewing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. NMFS manages the Pacific mackerel fishery in the U.S. EEZ off the Pacific Coast (California, Oregon, and Washington) in accordance with the FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (i.e. OFL/ACL/HG) for each Pacific mackerel fishing year. The purpose of this final rule is to implement the 2015-2016 ACL, HG, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific mackerel in the U.S. EEZ off the Pacific Coast.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in conjunction with the

OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific mackerel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The annual biomass estimates are an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is  $HG = [(Biomass-Cutoff) * Fraction * Distribution]$  with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel. For the 2015-2016 management season this is 120,435 mt.
2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.
3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.
4. *Distribution.* The average portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific Coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2015 Council meeting, the Council adopted the “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015-16 and 2016-2017 Fishing Years” (completed by NMFS Southwest Fisheries Science Center) and the resulting Pacific mackerel biomass estimate for use in the 2015-2016 fishing year of 120,435 mt. Based on

recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is implementing, an OFL of 25,291 mt, an ABC and ACL of 23,104 mt, a HG of 21,469 mt, and an ACT of 20,469 mt for the fishing year of July 1, 2015, to June 30, 2016. As of the publication of this final rule, the level of Pacific mackerel harvest since July 1, 2015, in the EEZ off the Pacific Coast has not reached 20,469 mt; Pacific mackerel harvested in this area between July 1, 2015, and the effective date of this final rule will count toward the 20,469 mt ACT. Additionally, the Council also adopted and recommended harvest specifications for the 2016-2017 fishing year; however, currently NMFS is only implementing the annual harvest measures for the 2015-2016 fishing year. A subsequent rule will be published later in the year that will propose the Council's recommendations for the 2016-2017 fishing year.

Upon attainment of the ACT, the directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. For the remainder of the fishing year incidental landings would also be constrained to a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel could be landed incidentally without landing any other CPS. Upon attainment of the HG (21,469 mt), no retention of Pacific mackerel would be allowed in CPS fisheries. In previous years, the incidental set-aside established in the mackerel fishery has been, in part, to ensure that if the directed quota for mackerel was reached that the operation of the Pacific sardine fishery was not overly restricted. There is no directed Pacific sardine fishery for the 2015-2016 season, therefore the need for a high incidental set-aside is reduced. The purpose of the incidental set-aside is to manage incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when

the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries in which incidental catch of Pacific mackerel cannot be avoided.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing.

Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

On September 10, 2015, a proposed rule was published for this action and public comments solicited (80 FR 54507), with a comment period that ended on October 13, 2015. NMFS received two comments, explained below, regarding the proposed Pacific mackerel specifications. After consideration of public comment, no changes were made from the proposed rule. Detailed information on the fishery and the stock assessment are found in the reports “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015-16 Fishing Year” and “Pacific Mackerel Biomass Projection Estimate for USA Management (2015-16)” (see **FOR FURTHER INFORMATION CONTACT**).

### **Comments and Responses**

*Comment 1:* The commenter expressed general support for this action, but only if the fishery is potentially subject to overfishing or if the decrease in harvest levels does not put people out of work.

*Response:* Fisheries have the potential to overfish Pacific mackerel if unregulated. NMFS does not anticipate that this action will have a significant adverse economic impact on fishermen in this fishery.

*Comment 2:* The commenter did not comment on the proposed action specifically, but discussed the management of commercial forage fish off the West Coast generally, specifically referencing concern over the status of Pacific sardine and northern anchovy stocks.

*Response:* NMFS notes that Pacific mackerel is not overfished, that overfishing is not occurring, and that the best available science was used in the determination of these catch levels. NMFS agrees that the consideration of ecosystem interactions, such as the role of forage species and ecological conditions, along with social and economic factors are critical when making fishery management decisions. As such, NMFS has been working to better understand diet linkages between forage fish species and higher order predators to enhance the ecosystem science used in our fisheries management.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

These specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 12, 2016

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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